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In the Matter of the Petition of :  
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WISCONSIN COUNCIL OF COUNTY :  
AND MUNICIPAL EMPLOYEES #40, :  
AFSCME, AFL-CIO :  
 :  
Involving Certain Employees of :  
 :  
CITY OF WAUSAU :  
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**Appearances:**

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

## FINDINGS OF FACT

- UNIT NO. 1

No. 20916

## UNIT NO. 2

All regular full-time and regular part-time professional employees employed by the City of Wausau excluding elected officials, supervisory, confidential, managerial, law enforcement, firefighting and employees employed by the Wausau Area Transit System;

and that the petition further requested that the professional employees (Unit No. 2) be given the opportunity to determine whether they desire to be included in a single bargaining unit with the non-professional employees (Unit No. 1).

4. That during the course of the hearing herein the parties agreed that the employees occupying the classifications in the following departments are to be included in the non-professional voting group (Unit No. 1):

<u>Department</u>	<u>Positions</u>
Assessor	Administrative Specialist Property Appraisal Tech
Community Development	Clerical Assistant II
Finance	Offset Dupl. Machine Op. Clerical Assistant I Clerical Assistant II Accounting Assistant I Inventory Clerk Custodial Worker Building Maintenance Worker Building Care Lead Worker
Inspection & Electrical	Clerical Assistant I
Municipal Judge	Municipal Court Secretary
Police	Clerical Assistant I Terminal Operator I Parking Cashier Police Communication Specialist Crossing Guard
Public Works	Custodial Worker Clerical Assistant II Clerical Aide Executive Secretary I
Water & Sewerage Utilities	Wastewater Quality Control Specialist Utilities Billing Coordinator Clerical Assistant II

and that the parties further agreed that employees occupying the classifications in the following departments are to be included in the professional voting group (Unit No. 2):

Assessor	Property Assessor I Property Assessor II
Community Development	Housing Project Coordinator Housing Rehabilitation Specialist
Finance	Employment Counselor
Inspection & Electrical	Electrical Inspector Building Inspector Property Inspector Plumbing Inspector
Public Works	City Surveyor & Chief Engineering Technican Civil Engineer I

5. That during the course of the hearing, the parties agreed that certain positions and the individuals occupying same be excluded from the units on the basis of managerial, supervisory or confidential status; that the Employer contended, contrary to the Union, that individuals occupying the positions of Financial Management Supervisor, Storekeeper, and Accounting Assistant II in the Finance Department, Executive Secretary I in the Police Department, and Administrative Specialist in the Public Works Department be excluded from the units involved herein on the basis that both the Financial Management Supervisor and the Storekeeper are managerial and supervisory employees, that both the Accounting Assistant II and the Administrative Specialist are confidential employees and that the Administrative Specialist is a supervisory and confidential employee.

6. That the Financial Management Supervisor position, presently occupied by Perry Mattes is responsible for the development and implementation of accounting and financial systems and methods and the evaluation of such systems; that Mattes reports directly to the Head of the Finance Department; that Mattes directs the work of five employees, whose regular work assignments are fixed in a normal routine, and Mattes reviews their work product, trains them and takes action to correct their work errors and to improve their job performance; that Mattes interviews prospective employees and recommends whether they should be hired or not and his recommendations have always been accepted; that Mattes has spoken to one employee regarding time wasting and recommended that a probationary employee not be retained which recommendation resulted in extending the employee's probation, whereupon the employee resigned; that Mattes does a yearly or more frequent performance appraisal evaluation on each of the employees assigned to him and approves all their requests for vacation, personal days, and sick leave; that Mattes reassigns employees to cover for absences due to vacation and other leaves; that Mattes has recommended that employees be reclassified but his recommendations have not been followed; that Mattes is in pay grade 41 which has a minimum of \$9.953/hour and a maximum of \$11.709; that the next highest paid employee is in pay grade 26 with a minimum of \$6.562/hour and a maximum of \$7.719; that this salary differential relates not only to his work expertise and experience but results in part from his supervisory responsibilities; that while Mattes makes recommendations with respect to the implementation of finance systems and equipment, any allocation of resources for these require approval of Mattes' superiors and the City Council; and that Mattes exercises supervisory responsibilities in sufficient combination and degree as to make him a supervisory employee.

7. That the Storekeeper position, presently occupied by Roy Schiefelbein, is responsible for maintaining an inventory of parts, equipment and supplies, including fuels, as well as the associated record keeping; that the Employer's inventory has a value in excess of \$200,000.00 and is computerized, i.e., the computer indicates when and which items need to be restocked and the Storekeeper then prepares the appropriate purchase orders and requisitions and restocks; that all purchases over \$10.00 require the approval of the Storekeeper's superiors; that the Storekeeper contacts vendors to determine the lowest price for fuels and other products and makes a recommendation to his superior, who in turn must authorize the purchase; that the Storekeeper directs the work of an Inventory Clerk, but has not hired, fired, promoted, evaluated or approved leave requests for the Inventory Clerk nor effectively recommended same; that the Storekeeper does not possess the effective authority to commit the resources of the Employer in sufficient manner or degree so as to render him a managerial employee; and that Schiefelbein does not exercise supervisory responsibilities in sufficient combination and degree to make him a supervisory employee.

8. That the Accounting Assistant II position, presently occupied by Ila Koss, is responsible for preparing the Employer's payroll; that Koss has

employees, however, she has not hired, fired, disciplined, evaluated or approved leave requests for these employees and her recommendations with regard to hiring employees have been rejected; and that Dix does not exercise supervisory responsibilities in sufficient combination and degree to make her a supervisory employee.

10. That the position of Executive Secretary I in the Police Department, presently occupied by Christine Weaver, is responsible for all secretarial services for the Chief of Police including typing disciplinary actions by the Chief, grievance responses by the Chief, and the Chief's personal notes and impressions of grievance meetings; that Weaver is responsible for typing the minutes of the Police and Fire Commission including both open and closed meetings; that she has access to personnel files and maintains the Chief's calendar; and that Weaver is the only employee available in the Police Department to perform clerical duties of a confidential nature.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time employees of the City of Wausau excluding elected officials, supervisory, confidential, managerial, professional, law enforcement, firefighting and employees employed by the Wausau Area Transit System and employees in the bargaining unit described as follows: "all regular full-time and regular part-time employees of the City employed in the Public Works Department (construction and maintenance division, engineering division, water meter division, water distribution division, waste water treatment plant division, sewerage maintenance division, Parking Meter Maintainer in Parking Utility and electrical department)" constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

2. That all regular full-time and regular part-time professional employees employed by the City of Wausau excluding elected officials, supervisory, confidential, managerial, law enforcement, firefighting and employees employed by the Wausau Area Transit System constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

3. That should a majority of the eligible employees in the unit described in paragraph 2, supra, vote, in an election conducted by the Wisconsin Employment Relations Commission, to be included in a single unit with the employees in the unit described in paragraph 1, supra, then units 1 and 2 shall constitute one single appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of MERA.

4. That the occupant of the Financial Management Supervisor position, Perry Mattes, is a supervisory employee within the meaning of Sec. 111.70(1)(o) of MERA and is therefore appropriately excluded from the collective bargaining unit set forth in paragraph 2, supra.

5. That the occupants of the Storekeeper position, Roy Schiefelbein, Accounting Assistant II position, Ila Koss, and Administrative Specialist position, Carolyn Dix, are municipal employees within the meaning of Sec. 111.70(1)(b) of MERA, and are appropriately included in the bargaining unit set forth in paragraph 1, supra.

6. That the occupant of the Executive Secretary I position, Christine Weaver, is a confidential employee and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(b) of MERA.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

#### DIRECTION OF ELECTION

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission, within forty-five (45) days from the date of this directive, in the following voting groups for the purposes stated therein:

### VOTING GROUP 1

All regular full-time and regular part-time employees of the City of Wausau excluding elected officials, supervisory, confidential, managerial, professional, law enforcement, firefighting and employees employed by the Wausau Area Transit System and employees in the bargaining unit described as follows: "all regular full-time and regular part-time employees of the City employed in the Public Works Department (construction and maintenance division, engineering division) sign unit, water treatment plant division, water meter division, water division, Parking Meter Maintainer in Parking Utility, and electrical department," who were employed on August 12, 1983, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented, for the purposes of collective bargaining with the City of Wausau on wages, hours and conditions of employment, by Wisconsin Council of County and Municipal Employees, #40, AFSCME, AFL-CIO.

### VOTING GROUP 2

All regular full-time and regular part-time professional employees employed by the City of Wausau excluding elected officials, supervisory, confidential, managerial, law enforcement, firefighting and employees employed by the Wausau Area Transit System, who were employed on August 12, 1983, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining:

- (1) whether a majority of said employees in said voting group desire to be included in a single collective bargaining unit with those eligible employees in Voting Group 1,

and

- (2) whether a majority of such employees voting desire to be represented, for the purposes of collective bargaining with the City of Wausau on wages, hours and conditions of employment, by Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin this 12th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

The Union herein seeks elections among certain employees of the Employer to determine whether said employees desire to be represented by it for the purposes of collective bargaining. The parties have agreed upon the descriptions of the appropriate units, which are set forth in the Findings of Fact, Conclusions of Law and the Direction. Although the parties have agreed to the descriptions of the bargaining units, issues have arisen as to whether the occupants of certain positions are "employees" within the provisions of the Municipal Employment Relations Act, hereinafter referred to as MERA. The Employer would exclude the following positions on the basis that they are managerial, supervisory or confidential:

1. Financial Management Supervisor
2. Storekeeper
3. Accounting Assistant II
4. Administrative Specialist
5. Executive Secretary I

FINANCIAL MANAGEMENT SUPERVISOR:

The Employer, contrary to the Union, contends that the Financial Management Supervisor, Perry Mattes, is a supervisory employe and therefore excluded from the unit.

Sec. 111.70(1)(o)1 of MERA defines the term "supervisor" as follows:

. . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

In its interpretation of the above definition, the Commission has on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes; and

7. The amount of independent judgment exercised in the supervision of employees. 1/

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employee to be a supervisor. 2/

The record establishes that Mattes has played a significant role in the hiring and retention of employees. Mattes evaluates the employees he directs and approves all absences for them. Mattes is ultimately responsible for their work product and he reassigns employees to fill in for temporary absences. In summary, Mattes exercises sufficient indicia of supervisory authority to be considered a supervisor. 3/ Since he is excluded from the unit on that basis we have not addressed the question of his alleged managerial status.

STOREKEEPER:

The Employer, contrary to the Union, contends that the Storekeeper, Roy Schiefelbein, is a managerial and a supervisory employee.

In determining whether a position is managerial, and thus excluded from the definition of the term "municipal employee" contained in Sec. 111.70(1)(b) of MERA, the Commission has stated:

Managerial Employees . . . have been excluded from MERA coverage on the basis that their relationship to management imbues them with interest significantly at variance with those of other employees . . . (M)anagerial employees participate in the formulation, determination and implementation of management policy . . . In addition, managerial status may be related to a position's effective authority to commit the Employer's resources. 4/

Specifically regarding the effective authority to commit the Employer's resources, the Commission has stated:

The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 5/

This power must not be "ministerial," such as "the authority to spend money from a certain account for a specific purpose . . ." 6/

The Employer argues that the Storekeeper position has already been determined by the Commission in a prior unit clarification to be managerial, 7/ and the duties and responsibilities of the position have not changed. Based on the record in the prior case, we found that since the then-incumbent Storekeeper was

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1/ Dodge County (Clearview Nursing Home), (11469-A) 3/83; City of Cudahy, (19507) 3/82; Northwood School District, (20022) 10/82; Wausaukee United School District No. 1, (15620-A) 6/83.

2/ id.

"functioning under virtually no supervision in a salaried position, the incumbent has almost total discretion when determining which materials are to be stocked; where, when and at what price said materials will be purchased; and what quantity of materials will be maintained. He establishes his own operating procedures and has authority to expend sums of over \$1,000.00 when purchasing material. He also has discretion to supply governmental bodies, other than the Municipal Employer, with stocked items and to reject any merchandise which is substandard. The inventory of the storeroom is valued at approximately \$75,000.00. Based upon the authority to commit the resources of the Municipal Employer, the Commission concludes that the Storekeeper position is managerial in nature and thus is excluded from the collective bargaining unit." 8/

The record in the instant case reveals the present Storekeeper's authority and discretion is very limited unlike that of his predecessor who was the subject of the previous clarification proceeding. The current incumbent Storekeeper must obtain approval for all purchases over \$10.00, and any decision as to purchases is triggered by the computer control system. The Storekeeper does shop around for the lowest price for fuels and other consumables; however, any purchase requires approval of the Finance Director. The Commission concludes that the Storekeeper is neither sufficiently formulating nor managing Employer policy nor sufficiently responsible for committing the Employer's funds to warrant his exclusion as a managerial employee. 9/

Although the Employer also asserted the Storekeeper position is supervisory, the Storekeeper has not hired, fired, or evaluated the Inventory Clerk and we are satisfied, considering the factors noted above in determining supervisory status, that such factors are not present in such combination and degree to warrant a conclusion that the Storekeeper is a supervisor. Therefore, we have included the Storekeeper in the bargaining unit described in Voting Group 1.

#### ACCOUNTING ASSISTANT II:

The Employer maintains that the Accounting Assistant II position, occupied by Ila Koss, is confidential because of her responsibilities for the Employer's payroll and her access to and maintenance of personnel files. The Commission has consistently held that in order for an employee to be considered a confidential employee, and thereby excluded from the bargaining unit, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purpose it must be the type of information that deals with (1) the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer; and (2) is not available to the bargaining representative or its agents. 10/ The Commission has also held that a de minimus exposure to confidential labor relations materials is insufficient grounds for excluding an employee from a bargaining unit, 11/ except where the employee is the only one available to perform such confidential duties. 12/ Responsibility for an employer's payroll and records of employees' participation in benefit programs along with supplying information to the employer's negotiating team has been found in several cases to be an insufficient basis for finding that an employee is confidential. 13/ Furthermore, the mere access to personnel files is an insufficient

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8/ Id.

9/ Iowa County, (16313-A) 4/83.

10/ Wisconsin Heights School District, (17182) 8/79; CESA No. 4, (14177-A) 7/80.

11/ Id.

12/ City of Port Washington (City Hall and Police Department), (18654-B) 4/82.

13/ Riverdale School District, (16968-A) 6/81; City of Ashland, (18808) 7/81; Sauk County, (15315-A) 10/81; City of Greenfield, (18304-C) 3/82; School District of Bruce, (19318-A) 5/83.



indicia of confidential status. 14/ We conclude that the Accounting Assistant II is not privy to matters which deal with the Employer's strategy in bargaining or contract administration, and the position is therefore included in the unit described in Voting Group 1.

#### ADMINISTRATIVE SPECIALIST:

The Employer asserts that the Administrative Specialist position, occupied by Caroline Dix is confidential based on her access to personnel files and her typing of disciplinary notices. Clearly, Dix's exposure to confidential matters is de minimus. Additionally, Dix is not the only employee in the Public Works Department who can perform this work because Alice Chernery is a confidential employee who types up the collective bargaining recommendations. Therefore, in accordance with discussion set out above, it is concluded that the Administrative Specialist position is not confidential.

The Employer also contends that the Administrative Specialist is a supervisory employee. The record indicates that Dix does not hire, fire, evaluate employees or approve their absences, and her recommendations on hiring were rejected. The vast majority of Dix's time is spent in performing clerical duties, and while she assigns work to other employees, it must be concluded that she is a lead worker as she does not meet the criteria, in sufficient combination or degree, to be a supervisory employee. Therefore, the Administrative Specialist position is included in the bargaining unit described in Voting Group 1.

#### EXECUTIVE SECRETARY I:

The Employer posits that the Executive Secretary I position, occupied by Christine Weaver, is a confidential employee. The record indicates that as the Police Chief's personal secretary, Weaver types up the Chief's personal notes and memos related to grievance meetings. In addition to discipline and grievance matters, Weaver also types minutes from the Police and Fire Commission's meetings, both open and closed. Although Weaver does not spend a majority of time performing such confidential matters, she is the only clerical employee available to the Police Chief to perform such duties and under these circumstances, we conclude that the position of Administrative Secretary I is confidential in nature and therefore excluded from the bargaining unit. 15/

#### THE VOTING PROCEDURE:

When in an election proceeding a request is made to include professional employees in a single unit with non-professional employees, Sec. 111.70(4)(d) of MERA requires that the professional employees be given an opportunity to vote to determine whether they desire to be so included. In order to be so included, a majority of the eligible professional employees must vote in favor of such inclusion. Therefore, in this proceeding, the professional employees (Voting Group 2) will be given two ballots, (a) to determine whether they desire to be included in a single unit with non-professional employees (Voting Group 1) and, (b) whether they desire to be represented by the Union. The unit determination ballot will be a separate colored ballot, and the professional employees will be instructed to deposit their unit determination ballots in the ballot box. The professional employees who appear to vote will be instructed to place their representation ballots in a furnished blank envelope and to seal such envelope and deposit same in the ballot box.

The unit determination ballots cast by the professional employees will be initially counted, and should a majority of the eligible professional employees vote in favor of being included in the unit of non-professional employees, the sealed envelopes, containing the ballots of the professionals with respect to representation, will be opened and their ballots will be co-mingled with the representation ballots cast by the non-professional employees, and thereafter the tally will include the representation ballots cast by all employees.

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14/ School District of Loyal, (18149) 10/80.

15/ Kenosha Unified School District No. 1, (10558-B) 1/83; Town of Pewaukee, (20759) 6/83.

Should a majority of the professional employees eligible not vote in favor of being combined in a unit with non-professional employees, then the professional employees shall constitute a separate unit, and their representation ballots will not be co-mingled with the representation ballots cast by the non-professional employees. In that event, the representation ballots cast by the non-professional and professional employees will be tallied separately to determine separately their choice as to bargaining representative.

Dated at Madison, Wisconsin this 12th day of August, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Gary L. Covelli*  
Gary L. Covelli, Commissioner

*Marshall L. Gratz*  
Marshall L. Gratz, Commissioner